06-12-09

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

- - - - In the Matter of - - - -	)	PUC Docket No. 2008-0273
	)	
PUBLIC UTILITIES COMMISSION	)	
	)	
Instituting a Proceeding to Investigate the Implementation of Feed-in Tariffs	)	
	)	
	)	

SOPOGY'S

POST-HEARING OPENING BRIEF

AND

CERTIFICATE OF SERVICE

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I. INTRODUCTION

By its Order filed on October 24, 2008, the Hawaii Public Utility Commission ("Commission") opened the instant docket, referred to hereafter as the "FiT" docket. The Commission, by its Order filed on November 28, 2008, granted the November 12, 2008 motion of Sopogy Inc. ("Sopogy") to intervene in the FiT docket. Sopogy hereby submits this document, constituting its Post-Hearing Opening Brief on the FiT docket, dated June 12, 2009, to the Commission in accordance with the Commission's Order filed on January 20, 2009, as amended by the Commission's Order on April 27, 2009 and its letter on May 21, 2009.

Sopogy believes that FiTs can be an effective tool for encouraging the rapid adoption of renewable energy facilities and systems if the program is designed and implemented in accordance with the fundamental principles of effective feed-in tariff programs as discussed in our Final Statement of Position (FSOP) and as generally outlined in the intervenors' Proposed Schedule FiT as included with Sopogy's FSOP. Successful FiT programs have been implemented throughout the world and have been shown to be one of the most effective policies for encouraging the rapid adoption of renewables onto the utility grid. Both Germany and Spain, in particular, stand out as successful models for such programs. Such a program in Hawaii would play a critical role in meeting Hawaii's clean energy and energy independence goals as outlined in the Hawaii Clean Energy Initiative.

Since Sopogy's Final Statement of Position and the subsequent PUC hearings, Sopogy has further refined its position based on meetings with a select group of intervenors as well as

discussions with HECO. Below are the main points of emphasis regarding Sopogy's position for structuring an effective FiT in Hawaii.

1. Purpose of FiT

The purpose of a feed-in tariff (FiT) for Hawaii is to stimulate the rapid adoption of renewable energy in Hawaii in order to move decisively and irreversibly away from imported fossil fuels. The FiT is designed to accelerate the acquisition of renewable energy by HECO companies to reduce Hawaii's dependence on imported fossil fuels, and to serve as an effective mechanism that significantly contributes to the accomplishment of the Hawaii Clean Energy Initiative (HCEI) and State energy goals. While a FiT will be but one mechanism within a larger group of policies and incentives to achieve such goals, Sopogy believes that a properly structured and implemented FiT will play a critical role in helping both the HECO companies and the State move rapidly down a path to a clean, stable and secure energy future.

2. Targets / goals

Sopogy supports setting the initial renewable penetration targets based on a 15% of 2008 peak demand of each utility, with targets established for both distribution and transmission circuits as outlined in the table below. 15% is an uncontroversial starting point given HECO Companies stipulation to this level in the HCEI agreement. Increased levels of penetration should be set at each two year program review period based upon pending grid upgrades, the results of circuit level DG interconnection capacity studies, and the incorporation of time of use rates and project storage options.

	Target Goals at Distribution Voltage (MW)	Target Goals at Transmission Voltage (MW)	Total Target Goals (MW)
HECO	175	175	350
HELCO	30	30	60
MECO	30	30	60
TOTAL	235	235	470

Established FiT targets are essential in order to stay on track and achieve the goals of the HCEI, and are also necessary for managing and assessing the rate impact of the FiT programs. Distribution and transmission goals should be addressed separately.

3. Eligible technologies

Sopogy supports the inclusion of solar (both PV and CSP), wind, and in-line hydro as eligible technologies under the initial launch of a FiT program. This is due to their commercial availability, local project deployments, and the utility's familiarity with these technologies. Sopogy is also open to including biomass and biogas in the initial phase of the FiT if industry representatives are able to provide the necessary technical and cost data required by the PUC to make technology and rate decisions. Other technologies, as appropriate, should be evaluated between the recommended two year review periods. The appropriate selections that meet program eligibility criteria should be included in the two year program update.

4. Pricing principles

A. FiT rates should be based on installed cost and may therefore vary by:

1. Island
2. Resource or technology type
3. Project size class
4. Interconnection issues

B. FiT rates should be based on the cost of energy production plus a reasonable rate of return for the project developer / owner.

C. Avoided cost should not be used as a basis for setting FiT rates.

D. The preferred source of cost data to establish FiT pricing is projects located in Hawaii. In cases where Hawaii specific data is not available, pricing data from mainland U.S. projects or other appropriate sources may be used with an applied factor for Hawaii cost adjustments.

E. Sopogy believes that FiT projects should be paid for any curtailment, thereby creating a necessary incentive for the utility to aggressively upgrade grid infrastructure to accommodate

the targeted levels of renewable energy penetration needed to achieve Hawaii's RPS standards and HCEI goals. One possible option that Sopogy would support is that presented by Tawhiri.

F. Projects that provide ancillary services and / or firming technologies such as energy storage that can be a benefit to the grid may be procured through FiTs. Such benefits should be priced separately from the FiT rates.

G. While it may be too difficult to implement in the initial FiT program (first 2 year period), the goal should be to quickly move to a FiT payment schedule based on time-of-use rates. Such a structure with properly priced tiers would create the incentives for renewable energy project developers to install projects with technologies that would deliver energy to the grid when most valued / needed by the utility to meet peak demand. Such an incentive would maximize use of the renewable energy harvested, reduce the possible need for curtailment, and allow for a larger penetration of renewables onto the grid while avoiding possible grid stability issues.

If time-of-use rates are not feasible, then the Commission should strongly consider adding either a storage feed-in tariff similar to the Battery FiT proposed by Clean Energy Maui, LLC or establishing a rate adder for projects that provide storage options.

5. Project size

Sopogy firmly believes that the FiT program should support projects up to 20 MW in size. However, as an initial starting point for the first 2 years of the FIT program, Sopogy is willing to accept the following project size by Island:

Utility	Island	Initial Project Size Limit
HECO	Oahu	5 MW
HELCO	Hawaii	3 MW
MECO	Maui	3 MW
MECO	Lanai	1 MW
MECO	Molokai	1 MW

Sopogy supports this initial starting point with the intent that project size limits will double every two years, thereby reaching the 20 MW project size goal on Oahu within 4 years (5 MW during initial two year period; 10 MW in 2nd two year period; and 20 MW project cap in 3rd two year period).

6. Interconnection

Standard interconnection requirements for each eligible technology, by project size class, should be incorporated into the FiT program to add clarity for project developers on requirements, timing and cost. The requirements should clearly state whether the cost for interconnection should be borne by the developer or the utility.

Sopogy believes that the developer should bear the cost up to the point of grid interconnection and that the utility should bear the costs at the point of interconnection and into the grid, including any equipment or circuit upgrades required to support the renewable energy delivered.

II. SOPOGY'S RESTATED FINAL STATEMENT OF POSITION

The issues, as identified in the Order Approving the HECO Companies' Proposed Procedural Order, as Modified, filed on January 20, 2009, were replaced with the below issues in accordance with the Commission Order Establishing Hearing Proceedings filed on 1 April, 2009. Sopogy's position on these issues is presented and discussed below.

1. Given the four existing renewable producer options (Schedule Q, Net Metering, Competitive Bid, and Non-bid PPAs), what contribution would FiTs make toward achieving Hawaii's renewable energy goals?

Under the FiT envisioned by Sopogy, FiTs would contribute significantly to the development of distributed generation renewable energy projects up to 20 MW in size. Due to the transparency created regarding pricing and contracting, the very nature of a FiT program is geared toward reducing obstacles and time delays in developing and commissioning renewable energy projects that sell clean power into the grid. Despite Hawaii's abundant natural resources, we are not on a path that rapidly and significantly moves the state away from its reliance on imported fossil fuels. Establishment of a well crafted FiT program, however, can quickly put Hawaii on the path to meeting its clean energy goals. While FiT is but one mechanism to encourage the rapid adoption of renewables, it is a significant step that will complement the utility's efforts to procure clean energy projects to meet its RPS goals and HCEI obligations in a rapid yet effective manner that rapidly and irreversibly moves the state away from fossil fuels.

Schedule Q

As Hawaii's policy is to now de-link the purchase of renewable energy from the price of fossil fuel (i.e., avoided cost), the preferred policy option would be to convert Schedule Qs to FiTs for qualifying technologies. Existing Schedule Q contracts should have the option to migrate to a FIT, possibly for a reduced contract term depending on the number of years in service and expected life of the existing project. Sopogy recognizes, however, that there may be legal considerations to address prior to allowing such an option. Projects with technologies

that do not qualify under FiT would use either non-bid PPAs or competitive bidding and Schedule Q would be phased out.

Competitive Bid

Competitive bidding is a relatively new procurement framework for the utility with the largest effort coming from the 100 MW RFP. As such, there is not yet enough data to understand the success or costs of this framework. Given the success of competitive bidding in other states, Sopogy believes that competitive bidding is of most value in addressing large scale or very specific utility procurement needs. Under a FiT that addressed projects up to 20 MW, competitive bids would be used to procure renewable energy projects > 20 MW and would also be used when the utility has a very specific need that would be more appropriate for the RFP process.

Non-bid PPAs

Under a FiT, non-bid PPAs would still be used to address projects up to 5 MW for technologies that did not qualify under the existing FiT. Technologies covered under the FiT, however, would not qualify for non-bid PPAs.

Net Metering

Sopogy believes that net metering is an important and effective mechanism for increasing the amount of renewable energy adoption at the residential and commercial levels. Net metering offers a customer a cost-effective method for off-setting a portion of or their entire site load. Thus, given its success, Sopogy strongly supports continuation of net metering. Sopogy also supports FiTs as an option for those customers that wish to become net renewable energy producers and deliver net renewable electricity to the grid. Finally, for those net metered customers that wish to "oversize" their system, we support a "hybrid" approach where the customer enters into a FiT agreement to get paid for the excess electricity to the grid on an annual basis.

2. What are the physical limitations on the utility's ability to purchase renewables?

There are no physical limitations on the utility's ability to purchase renewables; however there are economic limitations to the amount that can be purchased. Such economic limitations must, of course, be considered when setting FiT pricing and the pace of project interconnection.

The physical limitations that exist are the circuit limitations to incorporate renewable energy projects onto the system while maintaining grid stability. The level of penetration that the system can handle, by circuit, is not well understood and therefore the PUC should commission a study to determine current limits and ways to increase those limits in order to meet the RPS requirements and HCEI goals within the required timeframes. As a starting point, Sopogy supports setting the initial target penetration goals based on 15% of 2008 peak demand of each utility. 15% is an uncontroversial starting point given HECO Companies stipulation to this level in the HCEI agreement. Increased levels of penetration should be set for subsequent years pending grid upgrades, the results of studies of circuit level DG interconnection capacity, and the incorporation of time of use rates and project storage options, with the goal of raising target circuit penetration limits to 50% within six years of implementation of the FiT program.

	15% Target Goals at Distribution Voltage (MW)	15% Target Goals at Transmission Voltage (MW)	Total Target Goals (MW)
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TOTAL	235	235	470

3. What are the appropriate criteria for eligibility to sell under FiT tariffs?

Any renewable energy projects that use commercially proven technologies approved under the FiT, that is within the project size limitation applicable for a FiT tariff, meets the established interconnection requirements, will be in operation for at least 20 years, and does not exceed the designated level of circuit penetration (that will initially start at 15% as mentioned in #2 above)

shall be allowed to connect their project to the grid and will qualify for the established feed-in tariff rate.

For the initial phase of the FiT, qualifying technologies should include solar (both PV and CSP), wind, and in-line hydro due to the utility's experience in incorporating these technologies into the local grids and the availability of relevant cost data for establishing FiT rates. Biomass and biogas should also be considered for this initial phase.

4. What decisions are necessary to ensure that FiT rates are just and reasonable, as required by Hawaii law?

The Commission is able to establish "just and reasonable" FiT rates under a well crafted FiT program when provided with actual cost of energy production data from industry for commercially available technologies. To create such a program and determine appropriate rates, decisions need to be made in the following areas:

A. Eligible technologies

Sopogy supports the inclusion of solar (both PV and CSP), wind, and in-line hydro as eligible technologies under the initial launch of a FiT program due to their commercial availability and because of the experience with such technologies in our local markets. Sopogy is also open to including biomass and biogas in the initial phase of the FiT.

B. Pricing Methodology

A generally accepted pricing methodology is to set FiT prices based on the cost of energy production plus a reasonable rate of return for the project developer / owner. To set proper rates that are just and reasonable, therefore, requires that industry provide to the Commission (under protective order) either Hawaii specific cost data or cost data from other locations that then factors in Hawaii's specific costs for development, operations and maintenance. Avoided cost should not be used as a basis for setting FiT rates.

C. Pricing factors

FiT rates should be based on installed cost and may therefore vary by:

1. Island
2. Resource or technology type
3. Project size class
4. Interconnection requirements

5. What non-rate terms are necessary to make FiTs just and reasonable?

Sopogy supports the following non-rate terms as described below:

1. Term of FiT Agreement. Sopogy supports a 20-year term for FiT agreements.
2. Legal Content of the FiT Agreement. Sopogy supports the FiT agreement to be a "one-stop" agreement that specifies the rate, all contractual elements of a power purchase agreement, and standard interconnection agreement based on technology, location and project size category.
3. Compensation after FiT term conclusion. The FiT agreement should include up front the options available to the renewable energy provider for continuing to sell power to the utility upon expiration of the 20 year FiT term. Sopogy supports a one-time 5-year extension, or at the option of the FiT provider, the right to negotiate a new FiT or other power purchase alternatives that may be available at that time.
4. Renewable Energy Credits ("RECs"). Sopogy's position is that RECs belong to the owner of the project and that owner has the right to sell or trade those RECs as desired. Therefore, in pricing the FiT payment rate, the potential value of RECs should not be included.

6. Utility cost recovery: what principles should apply?

Sopogy supports HECO's recovery of FiT payment through the Energy Cost Adjustment Clause ("ECAC") as with current renewable PPAs. Sopogy would also support a cost recovery structure from either a special FiT Program Surcharge or from including FiT payments as part of the Clean Energy Infrastructure Surcharge.

7. What are the appropriate processes for accepting and interconnecting FiT projects?

Queuing Procedures:

Sopogy supports administering requests for interconnection of Renewable Energy Generating Facilities under an established FiT Schedule on a first-ready, first-to-interconnect basis, modeled after the either the queuing procedures adopted by the Midwest Independent Transmission System Operator, Inc. or by those in use under the California Solar Initiative.

It became clear from the hearings that project queue management needs to encompass not just the FiT program, but also the queues for competitive bidding, non-bid PPAs and net metering given the overall impact on renewable energy penetration levels on the grid. Therefore, it is Sopogy's recommendation that the Commission bring on an independent entity to manage the entire queuing process in order to provide complete transparency and fairness in the process. Responsibilities would include providing an up-to-date reporting system that will provide clarity to the market on where new projects would stand with regard to qualifying for the current FiT rate and expected timelines for interconnection.

Interconnection

Standard interconnection terms and requirements must be established for projects at both the distribution and transmission levels and should include performance standard requirements, fault ride-through requirements, and utility monitoring and control requirements. This includes projects up to 5 MW during the first two years of the FiT program, and for project sizes up to 20 MW by the second biennial program review. Interconnection at the distribution level requires modification of the existing Rule 14H for FiTs. Similar interconnection requirements must be developed for transmission level projects up to 20 MW.

8. If the Commission does approve FiTs, what actions can it take to keep total costs reasonable?

The Commission can take two specific steps to keep total costs reasonable. The first is to take a phased approach toward the implementation of the FiT program whereby the initial phase will incorporate a select list of approved technologies (PV, CSP, in-line hydro and wind), will limit project size to 5 MW (on Oahu), and limit renewable penetration to no more than 15% of total circuit peak load. Subsequent phases will add additional technologies, increase project size limitations, and increase circuit penetration levels. This phased approach will limit program costs during the initial phase, thereby allowing time for the Commission to fully understand the costs and impacts of the FiT and allow the Commission to make any necessary policy changes to support a successful initiative.

The second action is for the Commission to perform FiT program reviews every two years, with data gathering conducted at regular intervals within that period. FiT rates can then be reevaluated based on the amount of renewable project development occurring compared to the established two year renewable penetration goals established. Rates would then be raised, lowered, or kept the same for the next phase of FiT in order to control the rate of renewable development throughout the state.

CONCLUSION

Sopogy believes that a well crafted FiT will be an important mechanism in helping Hawaii to achieve its RPS mandate and HCEI goals. Sopogy further believes that the Proposed FiT as presented by the intervenors is better aligned with accomplishing these renewable energy goals. Therefore, Sopogy strongly favors the implementation of the Proposed FiT over the Straw FiT, and recommends that the commission issue a Decision and Order to implement the Proposed Fit.

Section III: Questions Raised by NRRI during Panel Hearing (Received May 11, 2009)

In the FiT hearing, parties were asked by NRRI to provide additional information on the following issues:

1. **Developers were asked if they have been able to use or monetize accelerated depreciation.**

Sopogy is a technology provider to solar project developers so does not have direct experience in using or monetizing accelerated depreciation. However, in Sopogy's conversations with solar developers and financiers it has become clear that many tax equity investors are not bothering with the accelerated depreciation due to the ambiguity in some of the renewable tax laws that makes the administrative burden and increase for audit not worth the potential benefit from the accelerated depreciation. Some projects are able to use or monetize this benefit, but many others do not appear to do so.

2. **Should the FiT be extended to incremental expansions of existing projects? HECO indicated technical or administrative difficulty in determining how much power would come from incremental additions. We asked HECO and developers to describe to what extent would this be possible?**

Yes, given the goal of rapid adoption of renewable energy. In many cases, an expansion of an existing project may be the fastest way to develop additional renewable energy projects and as such this "low hanging fruit" should not be ignored. Assuming that a similar technology is used, then the portion of power delivered that qualifies for the FiT rate would most easily be determined by making it a percentage of nameplate kW power added to the project over the total project site nameplate kW. If another type of renewable technology is added to the existing project site then it would be best to separately meter the new project to determine FiT payments.

3. **What reliability standards could HECO craft to add transparency, if not predictability, to HECO's reliability determinations for FiT applicants?**

To Sopogy's knowledge, there are currently no reliability standards relevant to the incorporation of distributed generation as outlined in the Proposed FiT. The Commission,

therefore, should direct HECO to develop such standards that clarify what constitutes grid system reliability. Such standards could then be used as the basis for determining circuit penetration limits, load management and grid infrastructure improvements that would allow for an increased level of distributed generation renewable energy projects to be incorporated into the grid.

4. **Developers were asked to provide examples of terms following the completion of PPAs and the amount of residual value.**

Sopogy's experience to date is that at the end of the PPA term that the project remains in the hands of the project developer and that further negotiations are required if the developer desires to sell power to the utility beyond the term of the original PPA.

Regarding recognized residual value, in a standard partnership flip model the developer has the long-term value of the project and the tax equity investor exits the deal after only 6-8 years. The developer is in it for the long-haul (and maybe an up-front fee). The developer takes the long-term risk and, from what Sopogy has heard in the market, they generally have a hard time getting anyone to value the post-PPA (20 or 25 yr) residual value. While there is obviously some value based on continued sale of electricity (assuming an actual project life beyond 20 years) or at least scrap value, there are also possible environmental and other liabilities that could be incurred with some of the renewable energy projects. This risk is completely borne by the project developer and may not fit into the desired risk profile of the utility if the asset were to go to the utility at the end of the 20 year FiT term.

5. **Life of the Land and other developers were asked what process the Commission should use in periodic updates to add technologies. They were also asked how the Commission should be kept abreast of relevant technology and industry developments.**

Sopogy suggests that the Commission consult with the U. S. Department of Energy and the Hawaii Natural Energy Institute for assistance on periodic technology updates. Periodic requests could also be made to local and national industry trade associations to present

information and supporting data on potential technologies to be added to the FiT. Technology updates should be timed to coincide with the review of the overall FiT program.

Section IV. Legal Questions – April 16, 2009

SOPOGY's responses to the Legal Questions below are based on our current understanding of the issues and regulations involved.

1) General

a) **Does Section 269-27.2(b), HRS, empower the Commission to establish a set of feed-in tariffs that compel the utility to offer to purchase power from nonfossil producers at rates, terms and conditions established by the Commission, even if those rates, terms and conditions differ from those initially proposed by the utility?**

Yes.

b) **Does the Commission have authority to mandate that the utility procure a particular quantity of nonfossil electricity, exceeding the statutory RPS requirements? Can the Commission establish deadlines? What statutes grant this authority?**

Yes. See 269-27.2(b) as follows:

> "(b) The public utilities commission may direct public utilities that supply electricity to the public to arrange for the acquisition of and to acquire electricity generated from nonfossil fuel sources as is available from and the producers are willing and able to make available to the public utilities, and to employ and dispatch the nonfossil fuel generated electricity in a manner consistent with the availability thereof to maximize the reduction in consumption of fossil fuels in the generation of electricity to be provided to the public. To assist the energy resources coordinator in effectuating the purposes of chapter 201N, the public utilities commission may develop reasonable guidelines and timetables for the creation and implementation of power purchase agreements."

Clearly, 269-27.2(b) provides the ability of the Commission to require the utility to acquire nonfossil sources and to establish reasonable guidelines.

c) **Is the Energy Agreement legally binding on any one? In what way? Who could sue whom for noncompliance?**

No, this is not a legally binding agreement on any party.

d) **Does the Commission have authority to adopt FiTs in this proceeding without having completed a proceeding on Clean Energy Scenario Planning?**

Yes.

e) **Under a FiT regime, will there still be a need for a contract between seller and the utility buyer? What form would these contracts take? What seller's obligations should be covered under these contracts?**

Yes, there is still a need for a contract between the seller and buyer. This should be incorporated into the FiT and include all relevant terms as would be found in a regular power purchase agreement and interconnection agreement in order to avoid the need for negotiations over the terms and conditions for each project. Without this standard form contract, the project developer will have to negotiate these terms separately which will add to the timelines and administrative burdens for rapidly rolling out renewable energy projects, thereby destroying a significant benefit of having a FiT program in the first place.

f) **Assuming there are contracts associated with FiT sales, what is the Commission's statutory obligation to review these contracts? What are effective procedures to expedite Commission review?**

Once the Commission approves a FiT tariff with standard prices and terms and conditions, there should not be a need for Commission review of contracts that do not deviate from the FiT standard form contract. The Commission will only need to review issues of concern regarding the standard form contracts during the periodic FiT reviews (which we recommend happen every two years).

2) Cost

a) **Does HRS § 269-27.2 impose any limit on total cost? For example:**

i) **Does the phrase "maximize the reduction in fossil fuels" in Section 269-27.2(b) <u>allow</u> the Commission to establish a quantity goal, determine the rate necessary to satisfy that goal, and impose that rate regardless of how high the rate is and regardless of total cost?**

Yes.

ii) **Does the "maximize" phrase <u>mandate</u> that result?**

Sopogy believes that the Commission has the discretion to require certain utility actions, for example in support of our RPS law, to achieve the required reductions in fossil fuel use by the utility.

iii) **If you believe the "maximize" phrase mandates that result, what effect does the discretionary term "may" have on the Commission's obligation?**

See response to ii) above.

iv) **Can the Commission determine a required quantity for the utility to purchase, and then set the rate at whatever level is necessary to attract that quantity? Would such a rate necessarily satisfy the just and reasonable standard?**

Yes it appears that the Commission can determine a required quantity and to set the rate needed to attain that quantity. Such a rate would also seem to satisfy the just and reasonable standard when referred against the guidance from HRS § 269-27.2.

b) **Regardless of any statutory limit on cost, does the Commission have authority to establish a dollar limit on the cost of utility acquisition of nonfossil electricity pursuant to a FiT? What statutes grant this authority?**

Sopogy is not able to answer this question at this time but reserves the right to provide a response at a later date.

c) **Does this authority to establish a dollar limit apply only to acquisition above the quantities required by the RPS statute?**

Sopogy is not able to answer this question at this time but reserves the right to provide a response at a later date.

3) Sellers' Legal Rights

a) PURPA

i) **Does a nonfossil developer have an existing statutory right, under state law or PURPA, to a negotiated PPA? If so, does that right continue even if the Commission establishes FiTs that constitute utility offers to buy at a stated rate, or can the Commission make the FiT the exclusive means by which nonfossil producers sell to the utility? Put another way, if there is a FiT applicable to a particular**

seller, may the Commission authorize (or forbid) the utility to negotiate a PPA on terms that vary from the FiT?

Sopogy's understanding is that, under PURPA, a qualifying facility does have the right to enter into negotiations with the utility for a PPA. Therefore, while a FiT would be the desired contract mechanism and should be a faster means for gaining project approval, the negotiated PPA option will still exist. Care must be taken with queuing procedures such that these negotiated PPA option is not treated as a way to "jump to the front of the line" over projects in the FiT queues.

ii) **Can the Commission substitute a FiT for Schedule Q, as a means of complying with PURPA? What type of issuance from the Commission would be necessary to demonstrate PURPA compliance?**

As Hawaii's policy is now to de-link the purchase of energy from the price of oil, Sopogy believes that the Commission can substitute a FiT for future Schedule Q contracts for those FiT qualifying technologies.

b) **Does HRS § 269-27.2 create any legal rights in sellers of nonfossil power? For example:**

i) **Does the phrase "just and reasonable rate" in HRS § 269-27.2(c) mean "just and reasonable" to the seller, or only "just and reasonable" to the consumer? That is, does the phrase "just and reasonable rate" allow a seller to contest a Commission-established FiT on the grounds that the rate is too low or that non-rate terms and conditions are unfavorable?**

Sopogy's understanding is that the term "just and reasonable" refers only to the consumer and not to the seller in this case.

ii) **On what specific grounds could the seller contest the rate? That the rate produces a return on equity too low to attract sellers? How would the seller prove this case, to the Commission and to reviewing courts? What data would the Commission have to rely on to insulate its rate decision from judicial reversal? What evidentiary burden does the seller have, to supply facts to the Commission so**

that the Commission has the necessary factual support for its decision?

Sopogy is not able to provide an answer at this time but reserves the right to provide a response at a later date.

iii) **If the Commission declined to establish any FiT rates, but instead authorized the utility to self-produce or purchase renewables as the utility deems appropriate, would the sellers have any legal claim against the utility or the Commission? If the answer is no, then do the sellers have any legal right to contest a Commission-established FiT?**

Sopogy is not able to provide an answer at this time but reserves the right to provide a response at a later date.

c) **Assuming the Commission establishes FITs, may the Commission authorize (or forbid) sellers with existing PPAs to terminate the PPA and enter into an agreement under the FIT? Under what conditions? With what Commission involvement?**

The Commission may authorize the contract change if the existing PPAs, as currently written, allow for changing the terms of the contract if mutually agreed upon by both the seller and the buyer. The Commission may forbid the change if it is not meet "just and reasonable" criteria. Each will be on a case-by-case basis and will therefore require Commission review and decision.

d) **Hawaii statutes prohibit undue discrimination in the provision of utility service. How does that prohibition apply in the context of FiTs? For example:**

i) **Can there be different rates for different technologies/sizes/islands: What factual differences are necessary to justify rate differences?**

Yes. By using a methodology whereby FiT pricing is based on cost of energy plus a reasonable rate of return for the developer, the established pricing must vary by technology, project size and location (as well as interconnection requirements and level of curtailment allowed).

ii) **Can there be negotiated PPAs that make use of FiT rates but that vary from each other in other terms and conditions?**

Yes. Sopogy's understanding is that negotiated PPAs will still be allowed due to PURPA, therefore it is feasible that the utility could negotiate different terms and conditions for a renewable energy project that would make use of the rates established under FiT. As mentioned above, there must be transparency and clarity for how the project queues are to be managed across all of the utility contracting vehicles.

iii) **Can there be a negotiated PPA for projects that qualify under a FiT?**

Yes. Sopogy's understanding is that PURPA regulations would still allow a qualifying facility to negotiate a PPA with the utility even if that project qualified under FiT. Queuing procedures should, however, favor those projects that can be brought on line more quickly by using the standard FiT contract and meeting the established interconnection requirements.

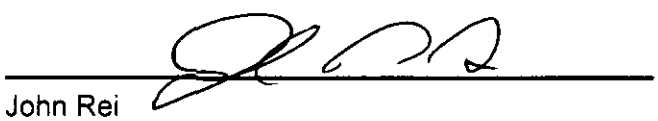
4) Utility Role

a) **Does the Commission have the power to restrict the utility's ability to build its own nonfossil generation, such as requiring the utility to refrain from building whenever there is a viable independent seller offering to sell? What findings must the Commission make to support such a restriction?**

b) **Same question as above, but applied to utility affiliates that sell renewable electricity to another utility affiliate.**

Sopogy is not able to provide an answer at this time but reserves the right to provide a response at a later date.

DATED: June 12, 2009, Honolulu, Hawaii



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CERTIFICATE OF SERVICE

The foregoing Sopogy Opening Brief was served on the date of filing by Hand Delivery or electronically transmitted to each such Party as follows.

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